HON'BLE SHRI G.S. SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE G.V. SEETHAPATHY

WRIT PETITION NO.17361 OF 2006

BETWEEN

M/s. Indian Dental Hospital,
Kukatpally.
.....Petitioner

And

The Commissioner,
Kukatpally Municipality,
Ranga Reddy District. .....
Respondent

::O R D E R ::

Counsel for the Petitioner : Shri A.K. NARASIMHA RAO

Counsel for Respondent No.2 : Shri P. Radha Krishna

Dated: 01.09.2006

Per G.S. SINGHVI, CJ

This is a petition for quashing notice dated 09.08.2006

issued by Commissioner, Kukatpalli Municipality (for short, 'the Commissioner') requiring the petitioner to remove unauthorized structure constructed in the complex known as Alluri Trade Centre.

In the affidavit filed by him, Dr. M. Bhanu Murthy, Proprietor of the petitioner, has averred that he is tenant of Shop No.38, H.No.2-22-274, Bhagyanagar Colony, Kukatpalli. He claims to have purchased the property from A.S. Raju and others. He has further averred that the original owners, A.S.Raju and others, who are owners of Plot Nos.1 to 5, 10 to 12 and 15 (totally measuring 5193 square yards) situated at Bhagyanagar Co-op. Housing Society constructed a commercial complex consisting of cellar plus a stilt plus four floors after obtaining sanctioned building plan. He has further averred that O.S.No.217 of 1997 filed by the owners for grant of permanent injunction was decreed by Principal Junior Civil Judge, West and South, Ranga Reddy District. According to him, notwithstanding the decree passed in the suit, the Commissioner has issued the impugned notice for demolition of the structure.

The petitioner has challenged the impugned notice on several grounds including the one that before asking it to demolish the so-called unauthorized structure, the Commissioner did not give notice and opportunity of hearing.

We have heard learned counsel for the parties and perused the record. At the hearing, we asked the learned counsel for the petitioner to show the sanctioned building plan and other documents like the sale deed vide which his client purchased the

premises in question, but he could not produce either of the documents.

In our opinion, the petitioner's failure to produce basic documents, which constitute the foundation of its claim that no unauthorized construction has been raised by it or the vendor disentitles it from seeking relief under Article 226 of the Constitution of India. However, keeping in view the fact that the impugned notice was issued without complying with the rules of natural justice, we feel that ends of justice would be met by giving liberty to the petitioner to appear before the Commissioner and produce all the documents to show that it has not made any unauthorized construction with a further direction to the Commissioner to decide the same within a specified timeframe.

Hence, the writ petition is disposed of with the following directions:

1) Within seven days from today, the petitioner shall appear before the Commissioner and produce all documents to show that it has not raised any construction in violation of the sanctioned plan. It shall also be free to raise all legally permissible objections against notice dated 9-8-2006.

2) Within next two weeks, the Commissioner shall consider the objections and documents produced by the petitioner, hear it and pass appropriate order.

3) If the Commissioner comes to the conclusion that the petitioner has made unauthorized construction or any deviation has been made from the sanctioned plan, then

he may order demolition of such illegal or unauthorized construction. However, such order shall not be given effect for a period of seven days within which the petitioner shall be free to avail appropriate legal remedy including by way of filing fresh petition.

Since the notice impugned in the writ petition was issued in furtherance of the direction given by the Division Bench, we direct that in future, writ petitions filed in the matter of removal of unauthorized structure or illegal construction shall be listed before the Division Bench as per roster.

We also deem it proper to observe that before issuing notice for demolition, the concerned authorities of the municipality should comply with the rules of natural justice. This would go a long way to obviate unnecessary litigation.

G.S. SINGHVI, CJ

G.V. SEETHAPATHY, J

01.09.2006
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